



Vol. 33 No. 8 AUGUST 2004

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## MACo ENTERS ITS FIRST U. S. SUPREME COURT CASE

In June, MACo joined several other county, municipal and telecommunications associations by filing an amicus brief, joining a Petition for a Writ of Certiorari to the US Supreme Court, for a California case which has been winding its way through various Federal courts.

This case concerns whether municipal, county or state officials, who make zoning and other land-use decisions alleged to be inconsistent with a provision of the Communications Act of 1934, are subject to actions for damages and attorney's fees under 42 USCA 1983.

The Third and Seventh Circuits denied the liability, holding that the expedited judicial review expressly provided by the original Act provides the appropriate remedy. However, the Ninth Circuit (which includes Montana) reached the opposite conclusion.

MACo joined the effort to review the Ninth Circuit Court's decision for the reason that: "The boards of county commissioners of the several counties of Montana are hereby authorized and empowered to (1) ...cooperate with associations and organizations of other county officials of this state and other states for the furtherance of good government and the protection of county interests;..." (MCA 7-5-2141)

The Communications Act of 1934 established a comprehensive system for the regulation of communication by wire and radio and created the Federal Communications Commission to carry out the Act's policies. In 1996 Congress amended the Communications Act to foster greater competition and innovation in local telephone and other communication services. Of particular relevance here, the 1996 Act created a new provision to address the relationship between local zoning and the sites of antennae for cellular and other wireless telephone services. Congress further enacted a section to leave zoning authority in the hands of state and local governments.

The Petition claims that the Ninth Circuit Court's decision departs from the court precedents and disrupts the careful balance established by the Communications Act. Participating associations consider this case as presenting a recurring issue of national importance and asks that the petition for a Writ of Certiorari be granted.

The Writ of Certiorari is a request to have the United States Supreme Court review the Ninth Circuit Court decision, because the Circuit Courts of Appeals are divided on interpretation.

# ANNUAL CONFERENCE AGENDA

The UM Grizzlies will be playing Northern Colorado at 1:00 pm on Saturday afternoon. (Conference motel rates will not be available on Saturday evening.)

## SUNDAY, SEPTEMBER 26

- 3:00 p.m. Board of Directors meeting  
4:00 p.m. MACo Economic Development Committee  
6:00 p.m. President's Reception and Banquet  
Entertainment: **Moore and Moore**  
Debbie and Carrie are a twin-sister singing and song writing duo from Nashville.

## MONDAY, SEPTEMBER 27

- 7:00-8:30 a.m. Prayer Breakfast  
8:30-noon **MACo Opening General Session**  
12:00-1:30 p.m. Lunch & Speaker: Colleen Landkamer,  
NACo Second Vice President  
1:30-2:00 p.m. "How to Influence Congress Without  
Leaving Home", Jeff Arnold  
NACo Deputy Legislative Director  
2:00-2:30 p.m. BOS Workforce Investment Consortium  
3:00-4:00 p.m. Joint Opening Session of Insurance Pools  
Workers' Compensation (JPA) and Prop-  
erty & Casualty (JPIA)  
4:00-6:00 p.m. Urban Counties  
Hard Rock Mining Counties  
Oil, Gas & Coal Counties

## TUESDAY, SEPTEMBER 28

- 7:00-8:30 a.m. Reservation Counties  
7:00-8:30 a.m. JPIA Trustees Breakfast  
8:30-10:00 a.m. **All MACo Committees Meet**  
10:30—12:10 Committee Chair Reports and Discussion  
12:15-1:15 p.m. Lunch & Speaker Abigail Kimbell  
US FS Region I Forester  
1:15-2:15 p.m. **Workshops:**  
a. Earned Income Tax Credit  
b. Aging Issues  
c. Growth

## MARK YOUR CALENDAR

- August 9 County budgets adopted; mill levies set**  
August 9 Public Defender Reform; Capitol  
August 10 MACITA meeting; Conference Room  
**August 10 Districts 1, 2 and 3; Wibaux**  
**August 11 Districts 6 and 7; Red Lodge**  
August 19 Drought Advisory Committee; DEQ  
**August 23 Districts 10 and 11; Hamilton**  
**August 24 MACo Transportation Committee**  
**August 25 Districts 8, 9 and 12; Virginia City**  
**August 27 Districts 4 and 5; Dutton**

## UPCOMING EVENTS

- September 1 MACo Resolutions Committee; 11:00**  
September 8 Interim Property Reappraisal Committee  
September 9-10 Interim Revenue/Transportation  
September 13-17 Treasurer's Association; Red Lodge  
September 14-15 Interim Education/Local Government  
September 14-15 Criminal Justice Information Meeting  
September 19-24 Clerk & Records Convention; Lewistown  
**September 26-29 MACo Annual Conference; Missoula**

- 2:45-3:45 p.m. **Workshops:**  
a. Montana Transportation Partners  
b. Wind Working Group  
c. Economic Development Committee  
d. Tour of the Missoula County  
Development Park  
4:00-6:00 p.m. 6 County Fort Peck Lake Group  
Montana Coalition of Forest Counties  
6:30 p.m. No-host hospitality and western buffet

## WEDNESDAY, SEPTEMBER 29

- 7:00-8:30 a.m. JPA Trustees Breakfast Meeting  
8:30 a.m. **Closing General Session**  
1. Resolutions  
2. Dues Proposal  
3. By-Laws Amendment  
4. Election of Officers  
5. Convention Site – 2006  
6. Appreciation Resolution  
7. Other Business  
Speaker: Jeff Hagener, Director  
MT Fish, Wildlife and Parks

## **JPA Workers' Compensation Trust Annual Meeting**

Election of Trustees and other business

## **JPIA Property & Casualty Trust Annual Meeting**

JPIA annual report, election of officers and other business

- 12:00 noon-2:00 p.m. Annual Luncheon  
Installation of Officers

- 2:00 p.m. 2004-2005 Board of Directors meeting

## JUNE BOARD OF DIRECTORS MEETING SELECTIONS FROM MINUTES

**Budget FY 2005:** Fiscal Officer Nyby presented the FY 2005 MACo budget. Overall, the budget is increased by 7.79% with salaries increased by the COLA at 2.3%. The most significant change is for the upcoming legislative session, including a legislative luncheon at the Capitol. The Board approved using leftover WIR funds to support an effort to host a WIR Board meeting or a NACo Steering Committee meeting in Montana. The MACo budget passed without objection.

**Dues Proposal FY 2006 (By-Law Amendment):** Fiscal Officer Nyby presented final recommendation for a multi-tiered dues schedule. This is coupled with a proposal to continue the PILT assessment at the reduced rate of .075%. The Budget Committee further recommended that the By-laws be amended to give the Board of Directors the authority to increase the dues schedule up to the COLA in any one year, with any increase above COLA to be submitted to the membership. The recommendations were adopted to present to membership, with Board member Rehbein opposing.

**MACo Policy for Committees:** President Brooker presented "MACo's Policy Committee Process, Goals and Objectives." There was discussion about the designation of an alternate for an absent member as set forth in the "Voting Procedure, (b)." The proposal was adopted without opposition.

**Annual Conference Fees:** A motion to adopt the new fee schedule raised concerns that an increase in fees might result in fewer commissioners attending. The motion carried with the following Board members voting in opposition: Richard Dunbar, Joan Stahl, Alan Thompson, Art Kleinjan and Paddy Trusler.

**Review of Commissioner Certification:** Executive Director Morris briefed the Board on the Commissioner Certification program scheduled for December 6-8, 2004. He went through the planned curriculum and explained the proc-

ess for certification. He noted that this was an optional program and both current and new commissioners could attend and seek certification.

### **Proposed new MACo Districts**

For a proposal to move Chouteau County from District 5 to District 4, 2<sup>nd</sup> Vice President Kaercher reported that the counties in those Districts support doing this. He requested that individual amendments to the By-laws for each of the three district changes be prepared and distributed at the respective district meetings.

### **Abandoned Mine Land Program**

The WIR Board of Directors adopted a resolution urging the NACo Public Lands Steering Committee to pursue the return of abandoned mine land program funds. Montana has been identified as having over \$43 million in the fund. Connie Eissinger, MACo Public Lands Committee Chair, has visited with the Governor's office and they are aware of it. Congress must pass a reauthorization bill and the revenue should be distributed as currently required. Board members showed significant interest in pursuing this issue.

### **County Identification Cards**

Assistant Director Blattie updated the Board on the status of the county employee identification program. The equipment has arrived. MACo is working on templates and is developing a standard process for counties to get the identification cards for their employees.

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# ATTORNEY GENERAL OPINION

Volume 50      Number 8

**HELD: The closing of a county-owned incinerator by the Park County Commission is an administrative act not subject to initiative and referendum.**

REQUESTED BY: Tara DePuy  
Park County Attorney

Before a petition proposing a local government resolution may be circulated for signatures, the county attorney "shall review the sample petition for form and compliance with 7-5-131." MCA 7-5-134(3). If the county attorney determines that the sample petition proposes an ordinance outside the powers of initiative or referendum specified in MCA 7-5-131, she may advise that the election administrator reject the petition. (45 Op. AG No. 5, 1993).

The Montana Constitution provides that "the legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit." (Art. XI, 8). In implementing this provision the legislature granted to local electors the power to propose "resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government". MCA 7-5-131(1). The closing of the incinerator is subject to jurisdiction only if it is within Park County's "legislative jurisdiction and power".

In your request, you urge consideration of a line of cases concerning the meaning of "legislative jurisdiction and power" in the local initiative context beginning with City of Billings v. Nore, 148 Mont. 96, 104, 417 P.2d 458 (1966), which set forth a test of "whether the act was one creating a new law (legislative) or executing an already existing law (administrative)." You place particular reliance on the four-part standard for legislative acts that the Supreme Court elaborated in Town of Whitehall v. Preece, 1998 MT 53, 956 P.2d 743. These cases deal with the legislative jurisdiction and power of municipalities, however, and not with the distinct authority of counties. Where the Supreme Court has addressed county initiatives and referenda, it has not directly addressed the fundamental question of county legislative power, but rather the specific subjects of initiatives for obscenity ordinances or limiting gambling and a referendum for withholding funds from a paving project.

(*Editorial Note: Citations are lengthy and available from MACo.*)

To resolve this question, a determination of the extent of a county's "legislative jurisdiction and power" must be addressed, beginning with the description of county powers in the Montana Constitution. "A county has legislative, administrative, and

other powers provided or implied by law." (MT Const. art. XI, 4(1)(b)). While subsection (2) of this provision instructs that "the powers of...counties shall be liberally construed," those powers must spring from a source "provided or implied by law." This general government rule may be inverted by a local government's adoption of a self-government charter granting "any power not prohibited by the constitution, law, or charter," (MT Const. art. XI, 6), but absent such a charter a county's power is limited to that expressed or implied by the legislature. "Every county is a body politic and corporate and as such has the power specified in this code or in special statutes and such powers as are necessarily implied from those expressed." (MCA 7-1-2101(2))

The Local Government Committee report to the Constitutional Convention explained the reasoning behind the provisions eventually incorporated into article XI, section 4(1)(b):

*Through stringent court interpretations . . . Montana counties have been denied the local legislative, or ordinance-making powers possessed by cities and towns. . . .*

*The Local Government Committee is well aware of contentions that counties should not exercise any legislative power because the traditional county structure does not allow for clear separation of the legislative and executive functions and thus does not provide for clear separation of powers. However, the committee believes the legislature can build safeguards into any grant of legislative powers to counties to guard against such alleged abuse of the separation of powers concept. The language of section 4, subsection 2 clearly hinges the grant of legislative powers to counties on grants from the legislature; no broad grant of power is given directly to counties by this section.*

(II 1972 Mont. Const. Conv. 793-94)

While the Montana Constitution gives the legislature power to grant the exercise of legislative power to general government counties, the Montana Code does not provide for it in this instance. Instead, the legislature clearly has distinguished the narrower powers of counties from the broader powers of municipalities. The enumeration of county powers in MCA 7-1-2103 does not include legislative powers. In contrast, "a municipality has legislative . . . powers," (MCA 7-1-4122(1)), including broadly enumerated public order and welfare powers. (MCA 7-1-4123).

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Similarly, counties organized as charter governments must provide for a legislative body (MCA 7-3-704) and may enumerate their own legislative powers in the charter (MCA 7-3-703). A county may also gain the legislative powers of a municipality by forming a consolidated city-county government. (MCA 7-3-1104, -1203; 48 Op. AG No. 14 at [ ] (2000))

This office has reiterated that, absent a charter granting self-government powers, "those counties which exercise only general powers are limited to whatever powers the legislature expressly or implicitly grants." (37 Op. AG No. 105 at 447 (1978); 47 Op. AG No. 18 at [ ] (1998)). [For example, MCA 61-12-101 (14) empowers local authorities to enact traffic ordinances. (40 Op. AG No. 51 (1984))

Even though the Montana Constitution extends initiative and referendum authority to voters of local government entities, that power is limited to the local government's legislative authorization. "Even under the policy of broadly construing the powers of initiative and referendum," those powers "have been reserved under the Constitution to legislative acts only." (Preece ¶ 24). "Recognition of 'inherent' powers of general power county governments would effectively obliterate the distinction between general powers and self-government powers, a result which is inconsistent with article XI of the Montana Constitution". (40 Op. AG No. 17 at 66 (1983)) In an early examination of county self-government powers under the 1972 Constitution, the Supreme Court observed that "had Madison County been acting as a general power jurisdiction, we should perforce be required to hold that Madison County had only such powers as were expressly or impliedly delegated to it," but "as a self-governing unit, Madison County has shared powers of legislative...authority." (State ex rel. Swart v. Molitor, 190 Mont. 515, 521, 621 P.2d 1100 (1981))

Beyond the basic corporate powers enumerated by MCA 7-1-2103 and exercised by the board of county commissioners (or its agents) under MCA 7-1-2104, a general government county may function through the administrative boards, districts, and commissions it may create under specific statutory authority. (MCA 7-1-201). The Park County Refuse District is an administrative district, created under the statutory authority of the predecessor to MCA 7-13-203. By definition, and in the absence of any grant of legislative powers to the county and its board of commissioners by law or charter, the actions of the administrative district are administrative and therefore outside of the legislative jurisdiction and power subject to initiative.

THEREFORE, IT IS MY OPINION:

The closing of a county-owned incinerator by the Park County Commission is an administrative act not subject to initiative and referendum.

**Governor Judy Martz  
Chief Justice Karla Gray  
Attorney General Mike McGrath  
invite you to attend**

## **Doing Montana Justice State and Local Partnerships**

**September 14-15, 2004  
Red Lion Colonial Hotel in Helena**

The conference focus is criminal justice information and its impact on law enforcement, prosecution, probation and parole, district courts, courts of limited jurisdiction and local government.

Participants will assist the Department of Justice in planning goals and projects.

- **Sharing Criminal Justice Information - the Benefits for Prosecutors, Sheriffs, Police and Courts**
- **Multi-jurisdictional Livescan Fingerprint - a Study in Local / State Partnership**
- **Domestic Violence & Protection Orders - Bridging the Gaps through Technology**
- **Changes in the Court Computer System - Full-Court Roll-out and JCMS Upgrades**
- **How Arkansas Connected Victims Rights, Probation/Parole and Law Enforcement**

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## DISTRICT MEETINGS

District meetings are planned and conducted by the districts. The chairs in the combining districts identify the location for the meeting and the host county arranges a luncheon.

Chairs of each district contact their member counties to ask for agenda items and work with the other chairs to set the agenda for the meeting.

All county officials are invited and encouraged to attend.

### Suggested Agenda Items

- By-law Amendments
- MACo Dues FY04 and FY05
- Resolutions
- District Chair Nominations
- 2nd Vice President Nominations
- MACo Economic Development Committee report (all districts)
- Workforce Investment Boards
  1. Nominations and Elections
  2. Workforce Issues

- August 10**    **Districts 1, 2 and 3; Wibaux**  
                  **St. Peter's Church**
- August 11**    **Districts 6 and 7; Red Lodge**  
                  **Bridge Creek Kitchen**
- August 23**    **Districts 10 and 11; Hamilton**  
                  **County Admin. Center**
- August 25**    **Districts 8, 9 & 12; Virginia City**  
                  **Episcopal Church**
- August 27**    **Districts 4 and 5; Dutton**  
                  **(to be assigned)**

## Natural Resources Institute For Tribal, State and Federal Partnerships

**September 8 - 9, 2004**  
**Meadow Lark Country Club**  
**Great Falls**

The unique purpose of the Institute is to establish a starting point to build one-on-one working relationships among staff at tribal, state and federal natural resource agencies.

- **Tribal Law and Authority**
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# COUNTY NEWS

## COUNTY OFFICIALS

**MINERAL COUNTY** Fair is dedicated to Charlie and Elsie Rock. Charlie served as Mineral County commissioner from 1985-1996.

**CHOUTEAU COUNTY** Treasurer is Sherry Peters. She replaces Michelle Mattick who resigned to move to another part of the state.

**CHOUTEAU COUNTY** has closed the county planning office and eliminated the county planner position. They have contracted to provide required planning services.

## ZONING & SUBDIVISIONS

**RAVALLI COUNTY** Deputy County Attorney James McCubbin ruled that proposing to build a second home on a parcel of land qualifies as a subdivision. Public controversy ensued.

In **PARK COUNTY**, a group of landowners, who successfully sued to avoid a zoning district, are now requesting \$10,000 each from the county for emotional trauma during the years the property was zoned.

**BEAVERHEAD COUNTY**, after collaborating with **BUTTE-SILVER BOW, MADISON AND JEFFERSON COUNTIES** on the Big Hole River corridor issues, expanded those efforts into an ordinance for the right to farm and ranch. They expect the statement to become part of local subdivision regulations.

**LEWIS and CLARK COUNTY** developed an "extraordinary" water right agreement. One subdivision developer is now required to monitor six nearby homeowners' wells and set aside funds to drill new wells should they go dry as a result of the adjoining subdivision development.

**GALLATIN COUNTY** proposed public water and sewer system for a large subdivision includes and surrounds an existing district, but excluded 23 landowners. The excluded parties sued the county, requesting to be included.

## ECONOMIC DEVELOPMENT

**FLATHEAD and RICHLAND COUNTIES** are the only Montana counties not participating in the new state program for regional development corporations.

**HILL, BLAINE, PHILLIPS COUNTIES** are considering financial participation in the costly repair of the 80+ year old canal which transfers water from St. Mary River in Glacier Park to the Milk River. MACo Board of Directors agreed to support the project through a letter of support.

**RICHLAND COUNTY** approved a tax abatement for a proposed gas processing plant which plans 300 miles of pipeline to serve producers for at least ten years.

**MISSOULA COUNTY** is participating in development of a 245 acre superpark at Fort Missoula, which will include a hydrogen-powered facility for the new location of UM's College of Technology.

**CASCADE COUNTY** will be site of a new coal-fired power plant which will supply electricity to 100,000 Montanans beginning in 2008.

**YELLOWSTONE COUNTY** has two more applications for tax reductions from new businesses. Wyoben, a bentonite mining company, and Bresnan Communications are asking for a ten-year phase in of taxes in order to construct office buildings.

**GARFIELD COUNTY** is struggling to assist a feed mill, which was funded with a Community Development Block Grant loan, to continue operating. Efforts to sell the commercial paper generated no interest. The county has been reluctant to foreclose on the property.

**VALLEY COUNTY** began tax deed proceedings on all property owned by St. Marie Development Corporation, following unapproved bankruptcy proposals. The St. Marie business has a total of 556 units and \$854,000 in uncollected taxes.

**DAWSON COUNTY** broke ground on a new Senior Citizens Center.

**GALLATIN, PARK and MADISON COUNTY** senior transportation services are coordinating routes to provide regional service. One day a month, the three providers will exchange vehicles, making it possible for residents to travel the three-county service area.

**ROSEBUD COUNTY** and the local pioneer association have entered into a joint venture to expand the County Museum, using PILT funds. Rosebud County's policy for the past several years is to use PILT funds for infrastructure improvements.

## OTHER

**DAWSON COUNTY** highly recommends an annual inventory of vehicles and equipment under county insurance. The county realized \$11,276 in savings as a result of a recent inventory.

**CASCADE COUNTY** received an anonymous donation to provide bookmobile services which had recently been eliminated due to budget cuts.

## IN MONTANA, GAS DRILLING HITS A RARE ROADBLOCK

Sections from an article by Blaine Harden, The WASHINGTON D.C. POST

Driven by soaring prices, empowered by federal mining law and cheered on by the Bush administration, energy companies have been unstoppable in recent years as they march through the Rocky Mountain West searching for natural gas.

This business uses the companies' newest drilling technique -- called coal-bed methane extraction -- a shallow drilling technique that goes after gas lying in seams of coal. To get at it, drillers must first pump out huge quantities of water, which is often tainted with salt and other minerals. The process -- especially the disposal of huge quantities of foul water -- tends to be far messier and, environmentalists say, more destructive than conventional deep-well gas drilling.

One county in Montana has had the temerity and the wherewithal to break the rule of lease it and drill. Not one gas well has been drilled in Gallatin County, where the Old West ranch culture has been replaced by the recreating ways of the New West bourgeoisie.

Affluent, well-educated newcomers from the East and West coasts have moved to this Montana county in the past 15 years, turning it into a place where people go outside not to work the land, but to play on it. When outsiders threaten the lifestyles and ranchettes of these latter-day settlers, they are quick to raise money, hire

lawyers, seduce the media and round up local politicians.

That is precisely what they did when they heard that the energy division of the J.M. Huber Corp., based in Edison, N.J., had leased mineral rights to 16,000 acres in a part of the county sprinkled with high-end houses. And it has stopped Huber cold, at least so far.

The company has been stymied in the county for five years, even though Huber's geologists have said there could be half a trillion cubic feet of natural gas here, potentially worth hundreds of millions of dollars.

The federal Energy Information Administration has described the Rockies as potentially "a Persian Gulf of natural gas." About 9 percent of the national supply now comes from coal-bed methane drilling, but that is predicted to increase sharply in the next decade.

The prolonged stalemate on drilling here is remarkable, considering that a similar attempt to hold back coal-bed methane drilling in Delta County, CO, has been slapped down in state court, and also considering that the federal government has cleared the way in the past year for 39,000 coal-bed methane wells to be drilled in the Powder River Basin in neighboring Wyoming.

Huber has not given up in Gallatin County. It is suing in state and federal court, and experts say the history of western

mining law supports its claims. That law allows split ownership of the land, which creates a fundamental conflict. Mineral rights on most of the disputed land in Gallatin County are owned separately from surface rights and have been leased to Huber by absentee landlords. State and federal courts have generally ruled that energy companies, if they have valid leases to gas and oil beneath the ground, can operate on that land, even without the consent of owners who have surface rights. Most of the county's new landowners do not own mineral rights.

Huber had the bad luck of trying to drill its first test well in one of the few rural parts of Montana that is part of a zoning district. That gave county officials the right, under state law, to impose drilling conditions to protect property values, wildlife and the county's rural character, according to Marty Lambert, the county attorney. "Huber has to prove that the county imposed conditions that were arbitrary and capricious," Lambert said. "I don't think Huber understood the kind of people it would be dealing with."

Those people, on average, are twice as likely as the typical Montanan to have a graduate degree, according to Census figures. They are also richer, more likely to have been born in another state and far more likely to be living off investment income than typical

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continued

residents of Montana, according to Ray Rasker, an economist at the Sonoran Institute, a conservation foundation based in Tucson. As such, these residents are a substantially different constituency than the ranchers and farmers who inhabit most of the Rocky Mountain regions where energy companies have succeeded in extracting coal-bed methane.

When Huber first rolled into Gallatin County, it quickly annoyed many of the upscale residents, according to a number of Gallatin County officials. At one early public meeting, a Huber official seemed to condescend to his audience, suggesting that because many in the crowd may have graduated from high school, they might be able to follow his presentation.

One of the very annoyed residents (even though he wasn't in the audience that day) was Dick Clotfelter. He is a Stanford University graduate and wealthy real estate developer from Seattle who moved to this county seven years ago. He lives in a large stone house he built on 100 spectacular acres not far from where Huber wanted to sink its first test well. "People here are smart, and they are willing to put their money where their mouth is," Clotfelter said.

After Huber annoyed him, Clotfelter got on the phone and asked his neighbors, most of whom also own large houses, to donate money for a legal challenge. "We raised \$50,000 in a weekend, from about 10 people, and \$50,000 in the next few weeks," he said.

Local legislators were also quick to jump on board. They introduced bills in the state legislature intended to curtail the power of energy companies to drill over local opposition. (In the legislature, where oil and gas interests have considerable sway, the bills died in committee.) Winning over county officials -- Republicans and Democrats alike -- was especially easy, because many of them are also newcomers who moved to Montana to hike, fish and ski.

There is, however, a major breach in the unified front that residents have thrown up against coal-bed methane. In parts of the county without zoning, residents are squabbling over passage of new zoning laws to stop Huber.

In this dispute, the Old West suspicion of government infringing on property rights is pitted against the New West obsession with protecting one's new patch of paradise from tacky-tacky development.

Some new residents want to limit density to one house per 80 acres, which would raise the value of existing housing. Old-timers want to subdivide their large tracts of land in pieces as small as 10 acres, which would raise the



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value of their property.

"There are people in this county who are using coal-bed methane as an excuse to shut the gate on development now that they are here," said Phil Olson, a former county commissioner. Olson, too, has a financial stake in the squabble. He wants 10-acre development, which would maximize his profit as he sells off inherited land.

The fight has halted the creation of a new permanent zoning district to regulate land leased by Huber. A temporary zoning law, which had held off the company for the past two years, runs out in August.

When it lapses, county officials say they won't have a legal way to stop Huber. "I'm not sure there is a darn thing we can do," said one county official, who asked not to be identified for fear of angering his constituents.

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## WESTERN INTERSTATE REGION (WIR)



Connie Eissinger, McCon County,  
being sworn in as WIR First Vice President



Don Davis, Colorado, Past President  
Donna Ruffing, Wyoming, President  
Connie Eissinger, Montana, 1st Vice President  
Robert Cope, Idaho, 2nd Vice President



WIR Board of Directors

## NACo ANNUAL CONFERENCE

Two days of pre-conference seminars and steering committee meetings preceded the opening general session on Sunday, July 18 in the Phoenix Civic Plaza.

General Session speakers for the three days of the conference included:

Honorable Anthony Williams  
Mayor of Washington D.C. and  
Vice President of the National  
League of Cities

Howard Fineman  
Chief Political Correspondent for  
"Newsweek"

Dr. Blaine Lee  
Vice President of FranklinCovey

Bishop T.D. Jakes  
Potters House in Dallas, Texas.

Dr. Richard Florida  
Heinz Professor  
Economic Development  
Carnegie Mellon University

An upcoming issue of MACo News will describe the resolutions and policies approved during the General Sessions.

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## NACo ANNUAL CONFERENCE PHOENIX, ARIZONA JULY 18-21, 2004

Four groups of workshops were offered over the three days, alternating with general sessions.

The eight Community and Economic Development workshops offered sessions in internet auctions, successful economic development, watershed and forestry restoration, and affordable housing.

The eight Health and Social Services workshops included costs of obesity, changes in Medicare, county health centers, managing health care costs, and addressing population trends towards aging.

Seven workshops in Homeland Security and Public Safety featured prisoner re-entry programs, detention privatization, juvenile justice, providing for mentally ill in jails, and homeland security funds and responsibilities.

The Environment, Land Use and Quality of Life group had six workshops focusing on air quality, molds/fungus, rural septic systems, energy conservation, open space and controlling storm water runoff.

The final group centered around county administration and included fifteen different sessions. Some of them included transportation alternatives, human resources risks, e-government, chairing meetings effectively, consolidating local government services, outsourcing IT, and using GIS.

In addition to the workshops, general sessions and speakers, there were 156 exhibitor booths to visit. The variety covered information technology services, financial services, recreation equipment, animal control experts, health care and mental health information, corrections, transportation management, architects, emergency services, solid waste management, alternative power, water, office equipment and supplies, road maintenance, etc.....



### MONTANA DELEGATION

(Back Row) Mike Murray, Lewis and Clark County  
Bill Kennedy, Yellowstone County  
Connie Eissinger, McCone County  
Kathy Bessette, Hill County  
Carol Brooker, Sanders County  
Doug Kaercher, Hill County  
Allan Underdal, Toole County  
Art Kleinjan, Blaine County  
Anita Varone, Lewis and Clark County  
Rita Windom, Lincoln County  
Vern Petersen, Fergus County  
(Front Row) Harold Blattie, MACo  
Alan Thompson, Ravalli County  
Peggy Beltrone, Cascade County  
Gordon Morris, MACo



WAITING FOR GENERAL SESSION

## The E-Mail Trap

*Reprinted from Governing Magazine*

E-mail is the modern neighborhood activist's best friend, but it also may be her worst enemy. Thanks to e-mail, neighborhood leaders can alert homeowners, build indignation and organize protests with the stroke of a few keys. In the old days, they'd have made scores of phone calls and personal visits to turn out a decent crowd. But as one suburban Atlanta activist has learned, the old ways had at least one advantage: You can't subpoena the words spoken in a phone call, unless the call is taped. But you can subpoena the e-mail messages on a home computer, and attorneys for one disappointed real estate developer have done just that. The case involves a company that was trying to build a shopping center and houses in Gwinnett County. Early on, the neighbors objected, and the developer worked out a deal to reduce the shopping center size. But as negotiations were concluding, a county commissioner got involved, pointing out to association leaders that, since nearby areas were almost entirely residential, they didn't have to compromise on anything. Neighborhood opposition stiffened, negotiations ended, and the county

commission rejected the rezoning request. The developer sued, claiming the commissioner's intervention was improper. The proof, its lawyers said, lay on the hard drives of the neighborhood activists, and armed with a subpoena, it obtained them. Some of the e-mails are embarrassing. One, from the commissioner, applauds the neighborhood association's opposition and adds that she was sending the message from a personal computer rather than a county computer "because [this message] will never be subject to open records." Oops. In total, lawyers obtained 250 pages worth of e-mails back and forth from the commissioner to the activists.

("Unfortunately," said one of the neighborhood leaders, "I have a tendency not to delete my e-mails. I left quite a paper trail.") Legal experts are not at all surprised to learn about the developer's subpoenas. "These [conversations] are things that would have been said over the telephone 25 years ago and lost forever," an expert about Internet issues at Harvard Law School pointed out. "[Now] they're not only a semi-permanent message but also are subpoenaable.... People have very little sense of how detailed a record we're leaving in the Internet space."

### MACo News

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